

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KRAFT FOODS GLOBAL, INC., THE)	
KELLOGG COMPANY, GENERAL)	
MILLS, INC., and NESTLÉ USA, INC.,)	
)	
Plaintiffs,)	No. 1:11-cv-08808
)	
v.)	Judge Steven C. Seeger
)	
UNITED EGG PRODUCERS, INC.,)	
UNITED STATES EGG MARKETERS,)	
INC., CAL-MAINE FOODS, INC., and)	
ROSE ACRE FARMS, INC.)	
)	
Defendants.)	
)	

PLAINTIFFS' LIST OF EXHIBITS TO BE USED IN OPENING STATEMENT

Pursuant to the Court's October 12, 2023 Minute Order, Plaintiffs submit the following list identifying: trial exhibits Plaintiffs intend to use during their opening statement; Plaintiffs' bases for admissibility; and Defendants' objections to those exhibits. Plaintiffs' exhibit list and Defendants' objections thereto appear on the Court's docket at Docket No. 289 and Docket No. 289-9.

Trial Exhibit No.	Basis for Admissibility	Objections
18	Relevant, non-hearsay use (notice and effect on listener); admissible under Rule 801(d)(2)(E). Probative value not substantially outweighed by unfair prejudice. Admissible against all defendants.	402; 403; 802; 805
37	Articles on page 1, pages 3-4 ("The Greatest Myths"), admissible under Rule 801(d)(2)(A) and (E). statistics on 5-6 on flocks and prices. Other portions will be redacted, including "Washington Report".	802*; Noerr-Pennington (only as to Washington Report attachment)

Trial Exhibit No.	Basis for Admissibility	Objections
50	Relevant to show Defendants did not conduct business in the open and to show exports. Admissible under 801(d)(2)(A) and (E). Probative value not substantially outweighed by unfair prejudice. Admissible against all defendants.	105; 402; 403; 802
68	Admissible under 801(d)(2)(A) and (E) and 803(6). Admissible against all defendants.	802
109	Admissible under 801(d)(2)(A) and (E). Admissible against all defendants.	105; 802
111	Relevant to show conspiracy and notice of antitrust complaints. Relevant, non-hearsay use (notice and effect on listener). Admissible under 801(d)(2)(E). Probative value not substantially outweighed by unfair prejudice. Admissible against all defendants.	403; 602
115	Relevant to show complaints of the animal welfare guidelines and the Certified Program, including that they are not scientifically sound and not a free market program. Admissible under 801(d)(2)(A) and (E) and 803(6). Probative value not substantially outweighed by unfair prejudice. Portion discussing lawsuit is not a prohibited use under 408. Admissible against all defendants.	402; 403; 408; 805
135	Article Marketing Committee Recommendations, Nation's Layer Flock and Other Statistics are admissible under 801(d)(2)(A) and (E). other portions will be redacted, including "Washington Report." Admissible against all defendants.	802*
140	Relevant to show conspiracy to increase profit through a 5% flock reduction. Admissible under 801(d)(2)(A) and (E). Probative value not substantially outweighed by unfair prejudice. Admissible against all defendants.	105; 402; 403; 802; 805

Trial Exhibit No.	Basis for Admissibility	Objections
143	Relevant to show conspiracy to increase egg prices through a flock reduction; relevant to show flock size and price. Admissible under 801(d)(2)(A) and (E) and 803(6). Probative value not substantially outweighed by unfair prejudice. Admissible against all defendants.	105; 402; 403; 802; 805; 901; Noerr Pennington
153	Relevant to show consideration of supply when analyzing how to increase egg prices. Admissible under 801(d)(2)(A) and (E) and 803(6). Probative value not substantially outweighed by unfair prejudice. Admissible against all defendants.	105; 402; 403; 805
178	February 7, 2003 Letter and confirmation between Baker and Gregory Admissible under 801(d)(2)(A) and (E) and 803(6). Admissible against all defendants. Remainder to be redacted	105, 802
193	Admissible under 801(d)(2)(A) and (E) and 803(6). Admissible against all defendants.	105; 805
210	Articles "Certified Companies," "Audit Form & Procedure," "You Should Implement Guidelines," "Plan to Balance Supply with Demand," all admissible under 801(d)(2)(A) and (E). Admissible against all defendants. Will redact remainder, including "Washington Report."	802*; Noerr-Pennington (only as to Washington Report attachment)
212	Relevant, non-hearsay use (notice and effect on listener). Admissible under 801(d)(2)(A), (C), and (E). Admissible against all defendants.	105; 802; 805
226	Admissible under 801(d)(2)(A) and (E), 803(6). Admissible against all defendants.	105, 802
256	Relevant statements by a party-opponent under 801(d)(2)(A) and in furtherance of the conspiracy under (E).	701; 802; 901

Trial Exhibit No.	Basis for Admissibility	Objections
257	Relevant statements by a party-opponent under 801(d)(2)(A) and (E) that discuss plan to reduce supply. Business record under 803(6). Probative value not substantially outweighed by unfair prejudice. Admissible against all defendants.	105; 402; 403; 701; 805; Noerr-Pennington
260	Admissible under 801(d)(2)(A) and (E) that discuss plan. Authentic under 901(b)(8)(C). Probative value not substantially outweighed by unfair prejudice. Admissible against all defendants.	105; 402; 403; 602; 802; 901; Noerr-Pennington
290	Relevant statements admissible under 801(d)(2)(A), (E). Admissible against all defendants.	105; 802; 805
328	Relevant statements; probative value is not outweighed by unfair prejudice; admissible under 801(d)(2)(A), (E). Admissible against all defendants. Document produced by Bell and admissible under 901(b)(8)(c).	402; 403; 701; 802; 901
330	Relevant statements admissible under 801(d)(2)(A), (E). Document produced by Bell and admissible under 901(b)(8)(c). Probative value not substantially outweighed by prejudicial effect. Admissible against all defendants.	402; 403; 701; 802; 901
365	Non-hearsay (effect on listener). Probative value not substantially outweighed by unfair prejudice. Subject of MIL.	105; 402; 403; 802; 805; MIL
371	Article "Egg Price Below Costs of Production," "Backfilling - A Loophole of a Hangman's Noose," admissible under 801(d)(2)(A), (E). Admissible against all defendants. Remainder to be redacted.	802*
374	Article "USEM Takes Large Export," "Don't Build to Replace Lost Production Too Quickly," Hatch Report, "Price Discovery," "Hen Disappearance," and "Bell's Egg Price Projections" admissible under 801(d)(2)(A), (E).	802*

Trial Exhibit No.	Basis for Admissibility	Objections
	Admissible against all defendants. Remainder to be redacted.	
377	Relevant statements admissible under 801(d)(2)(A), (E); probative value is not substantially outweighed by unfair prejudice; Admissible against all defendants.	105; 402; 403; 802
384	801(d)(2)(A), (E), 803(6). Admissible against all defendants.	802; 805
434	Admissible against all as co-conspirator statement (801(d)(1)(E)) and business record under 803(6).	105
445	Admissible under 801(d)(2)(A) and 803(6); admissible against all defendants.	105; 802
547	801(d)(2)(A), (E). Admissible against all.	802, 105
576	Relevance includes statements re exports, egg products, comment re UEP newsletters as "private information"; admissible under 801(d)(2)(A), (E); admissible as effect on the listener; admissible against all defendants. Probative value not substantially outweighed by unfair prejudice.	105; 402; 403; 802; 805
592	Relevant to show conspiracy, including flock reduction programs; admissible under 801(d)(2)(A) through (E) and 803(6). Probative value not substantially outweighed by unfair prejudice.	105; 402; 403; 802; 805
637	"Large Sign Up for 'Certified Company' Status," "Board Adopts Welfare Committee Recommendations," "Layers Same a Year Earlier," and "Adjust Supply for Low Demand Period" admissible under 801(d)(2)(A) through (E); remainder to be redacted. Admissible against all defendants.	802*

Trial Exhibit No.	Basis for Admissibility	Objections
754	703, 801(d)(2)(A), 801(d)(2)(E), non-hearsay purpose. Admissible against all defendants.	105; 106; 802* (as to RAF, CMF, USEM); 805
755	801(d)(2)(A), 801(d)(2)(E), non-hearsay purpose; probative value not substantially outweighed by unfair prejudice; Tr. Ex. 754 is attachment to email. Admissible against all defendants.	403 (incomplete); 802*

October 13, 2023

Respectfully submitted,

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Kellogg Company***

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